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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 THOMAS STONE,

10 Petitioner,

11 vs.

12 JAMES G. COX, et al.,

13 Respondents.

Case No. 3:14-cv-00476-RCJ-WGC

ORDER

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15 Petitioner has submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254
16 (#1). The court has reviewed it pursuant to Rule 4 of the Rules Governing Section 2254 Cases in
17 the United States District Courts. The court will dismiss one ground for relief because it is without
18 merit. The court will serve the petition upon respondents for a response to the remaining grounds.

19 Pursuant to a plea of guilty, petitioner was convicted in state district court of one count of
20 attempted sexual assault. Although petitioner did not file a timely direct appeal, the Nevada
21 Supreme Court determined that petitioner was deprived of a direct appeal. In a delayed direct
22 appeal pursuant to Rule 4(c) of the Nevada Rules of Appellate Procedure, the Nevada Supreme
23 Court affirmed the judgment of conviction. Petitioner then filed a post-conviction petition in state
24 district court, which denied the petition. Petitioner appealed, and the Nevada Supreme Court
25 affirmed. The current federal petition followed.

26 In ground 1, petitioner claims that his direct-appeal counsel provided ineffective assistance
27 because she did not present the arguments as issues of federal law. Petitioner claiming ineffective
28 assistance of counsel must demonstrate (1) that the defense attorney's representation "fell below an

1 objective standard of reasonableness," Strickland v. Washington, 466 U.S. 668, 688 (1984), and (2)
 2 that the attorney's deficient performance prejudiced the defendant such that "there is a reasonable
 3 probability that, but for counsel's unprofessional errors, the result of the proceeding would have
 4 been different," id. at 694. "[T]here is no reason for a court deciding an ineffective assistance claim
 5 to approach the inquiry in the same order or even to address both components of the inquiry if the
 6 defendant makes an insufficient showing on one." Id. at 697.

7 This ground is without merit. The court takes judicial notice of the on-line docket of the
 8 Nevada Supreme Court in Stone v. State, No. 57005.¹ In its order of affirmance, filed on February
 9 9, 2012, the Nevada Supreme Court cited its own decisions, but those decisions themselves applied
 10 principles of federal law regarding the validity of guilty pleas and equal protection. Even if
 11 appellate counsel did not cite these cases herself, petitioner suffered no prejudice because the
 12 Nevada Supreme Court recognized the issues of federal law. The court dismisses ground 1.

13 Ground 3 is a pages 7, 7a, and 7b of the petition. The parties should know that pages 7a and
 14 7b are reversed in the copy of the petition in the court's on-line docket.

15 IT IS THEREFORE ORDERED that ground 1 of the petition (#1) is **DISMISSED**.

16 IT IS FURTHER ORDERED that the clerk shall add Catherine Cortez Masto, Attorney
 17 General for the State of Nevada, as counsel for respondents.

18 IT IS FURTHER ORDERED that the clerk shall electronically serve upon respondents a
 19 copy of the petition and this order. In addition, the clerk shall return to petitioner a copy of the
 20 petition.

21 IT IS FURTHER ORDERED that respondents shall have forty-five (45) days from the date
 22 on which the petition was served to answer or otherwise respond to the petition. Respondents shall
 23 raise all potential affirmative defenses in the initial responsive pleading, including lack of
 24 exhaustion and procedural default. Successive motions to dismiss will not be entertained. If
 25 respondents file and serve an answer, then they shall comply with Rule 5 of the Rules Governing
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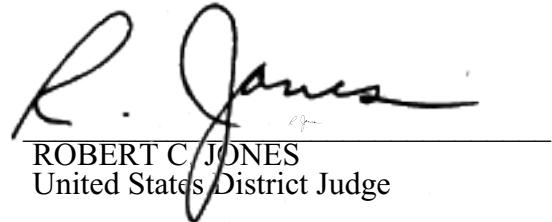
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 28 ¹<http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=25146> (last visited on
 November 18, 2014).

1 Section 2254 Cases in the United States District Courts, and then petitioner shall have forty-five
2 (45) days from the date on which the answer is served to file a reply.

3 IT IS FURTHER ORDERED that any exhibits filed by the parties shall be filed with a
4 separate index of exhibits identifying the exhibits by number or letter. The CM/ECF attachments
5 that are filed further shall be identified by the number or numbers (or letter or letters) of the exhibits
6 in the attachment. The hard copy of any additional state court record exhibits shall be
7 forwarded—for this case—to the staff attorneys in Las Vegas.

8 IT IS FURTHER ORDERED that henceforth, petitioner shall serve upon respondents or, if
9 appearance has been entered by counsel, upon the attorney(s), a copy of every pleading, motion or
10 other document submitted for consideration by the court. Petitioner shall include with the original
11 paper submitted for filing a certificate stating the date that a true and correct copy of the document
12 was mailed to the respondents or counsel for the respondents. The court may disregard any paper
13 received by a district judge or magistrate judge that has not been filed with the clerk, and any paper
14 received by a district judge, magistrate judge, or the clerk that fails to include a certificate of service.

15 Dated: November 19, 2014.


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17 ROBERT C. JONES
18 United States District Judge
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